

BEFORE THE ELECTRICITY OMBUDSMAN, JHARKHAND
4th floor, Bhagirathi Complex, Karamtoli Road, Ranchi – 834001

Appeal No. EOJ/22/2011

Dated- 15th February, 2012

M/s Bihar Foundry & Casting Ltd. Petitioner
Versus
Jharkhand State Electricity Board & others Respondent

Present:

Electricity Ombudsman	-	Shri Arun Kumar Datta
Advocate for the Petitioner	-	Shri N.K. Pasari Shri J.S. Pasari Shri Sudhir Kr. Singh
Advocate for the Respondent	-	None

EX PARTE ORDER

1. This appeal has been filed by the appellant M/s Bihar Foundry & Casting Ltd. against the Order/Judgement dated 19.09.2011 passed in case No. 32/2010 by the Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as V.U.S.N.F.) of J.S.E.B., Ranchi by which the complaint/representation of the appellant was dismissed. After filing of the appeal by the appellant notices were issued to respondents to appear in this case, but in spite of the service of the notice the respondents didn't appear in this case nor contested this case. Therefore this case was heard exparte and it has come up today for order.

2. The brief facts of this case is that the appellant made an application to the respondent for grant of electrical connection for the contract demand of 3600 KVA and 33 KV power supply. There after the respondents granted electrical

connection in pursuance of an agreement entered into between both the parties dated 13.07.2010. The electrical connection of appellant was energized with effect from 14.07.2010. On completion of the month of July 2010 the appellant was served with first energy bill for the month of July 2010.

3. According to appellant the energy bill for the month of July 2010 suffered from various anomalies because the energy bill so far it retaleles to KVA charges was raised for the entire month and further the KVA charge was levied on the basis of 75% of the contract demand, although the maximum demand recorded in the energy meter during the month was lesser amount. Therefore the appellant represented its grievance before the G.M.-cum-CE and the Electrical Executive Engineer (C&R) but the grievance of the appellant was not redressed. But the appellant made the payment of energy bills under protest and filed its representation before the V.U.S.N.F. of J.S.E.B. Ranchi for redressal of its grievances which was dismissed by the learned V.U.S.N.F. of J.S.E.B. Ranchi by its order dated 19.09.2011 passed in case no. 32/2010. Being aggrieved by and dissatisfied with the aforesaid Order/Judgement of the learned V.U.S.N.F. dated 19.09.2011 passed in case no. 32/2010 the appellant has filed this appeal for redressal of its grievances.

FINDINGS

4. It has been submitted by Shri N.K. Pasari the learned Counsel appearing on behalf of appellant that the respondent/J.S.E.B. has levied KVA charges for the entire month though the date of connection of appellant is 14.07.2010. As

such respondent/J.S.E.B. cannot be allowed to charge for the non hours of supply especially when the appellant was not even having electrical connection and supply line was not even charged. Therefore the bill for period when there was no electrical connection cannot be raised. It has been further submitted on behalf of the appellant that the respondent/J.S.E.B. had been able to supply power only for 375 hours, therefore the respondent/J.S.E.B. can charge KVA charges only for the actual hours of supply and not beyond that based upon the actual KVA recorded in the energy meter for the month.

5. Shri N.K. Pasari the learned Counsel of Consumer/Respondent has also drawn my attention towards Clause 8 of agreement (Annexure -1) which was entered in between both the parties on 13.07.2010 in which the date of commencement of supply is mentioned as 14.07.2010 and also Clause 4(c) of the aforesaid agreement, by which for the first 12 months service the maximum demand charges for any month will be based on the actual monthly maximum demand for that month. This has also been held by the Hon'ble High Court in WP(C) No. 5150/2007 in the case of J.S.E.B. vrs. M/s Kumardhubi Steels Pvt. Ltd. and the Hon'ble High Court has clearly held at paragraph 15 of the aforesaid Judgement that the board is bound by the agreement and the Tariff of 2003-04 and its schedule there to. The J.S.E.B. had also preferred an appeal before the Hon'ble Supreme Court which was registered as SLP (civil) No. 20104/2009 and the Hon'ble Supreme Court after hearing the matter had been pleased to dismiss this appeal of the J.S.E.B. vide order and Judgement dated 29.09.2009(Annexure – 6). On the basis of aforesaid orders of the Hon'ble High

Court and the Hon'ble Supreme Court it has been further submitted by Shri Pasari that for the first 12 month from the date of energisation of the electrical connection so far it relates to HT/Extra HT consumers the J.S.E.B. cannot levy maximum demand charge (KVA) on the basis of 75% of the contract demand. According to Shri Pasari the learned Counsel of consumer/appellant the maximum demand charges (KVA) has been charged based on 75% of the contract demand where as the contract demand of appellant being 3600 KVA and the appellant has been billed on 2700 KVA which is in violation of 4(c) of the HT agreement and therefore in view of clause 4 (c) of the HT agreement the bill of the appellant is to be raised by the respondent/J.S.E.B. for the first 12 months from the date of energisation, is to be on the basis of actual KVA recorded in the energy meter and not on the basis of 75% on the contract demand. It has also been submitted on behalf of the appellant that Tariff is silent on the issue KVA charges for the first 12 months and in the absence of any conflict between the Tariff and the agreement, the agreement will prevail and as such clause 4 (c) of agreement will be applicable for the purpose of billing of KVA charges for first 12 months supply. On the aforesaid ground the appellant has prayed for setting aside the Judgement/Order of learned V.U.S.N.F. dated 19.09.2011 passed in case No. 32/2010.

6. The consumer/appellant has prayed for quashing of the energy bill for the month of July 2010 on the ground that the date of commencement of supply is 14.07.2010 but the KVA charges has been levied for the entire month. Therefore KVA charges should be levied proportionally for the actual hour of

supply and not for the entire month. Beside it for the first 12 month KVA charges should be billed in accordance with Clause 4 (c) of the agreement executed in between both the parties on 13.07.2010. The appellant has also prayed for refund of the excess amount realized from the appellant with interest in terms of Clause 11.10.3 of the energy supply code Regulations 2005.

7. On perusal of the Tariff of the 2010-11 it is found that “for billing, the demands shall be the maximum demand recorded during the month or 75% on the contract demand which ever is higher”. Therefore in view of the Tariff order of 2010-11 the KVA charges cannot be raised on actual recorded in the meter for the first 12 months in accordance with 4(c) of the agreement executed in between both the parties on 13.07.2010. The aforesaid Judgement of Hon'ble High Court passed in the case of J.S.E.B. versus M/s Kumardhubi Steel Pvt. Ltd. bearing WP(c) 5150/2007 and also of the Hon'ble Supreme Court passed in SLP (civil) No. 20104/2009 is not applicable in this case which were passed in connection of Tariff for the year 2003-04. I am also of the view that when there is conflict in between the Tariff and agreement, then the Tariff will prevail. Because of aforesaid reasons I don't find any force in the contention of the learned Counsel of the appellant that the KVA charges should be billed for the first 12 months in accordance with Clause 4(c) of the agreement and therefore it is accordingly held that the bill of July 2010 has rightly been raised in accordance with the Tariff order 2010-11 which lays down the mode of charging KVA on recorded KVA or 75% of the contract demand, which ever is higher.

8. So far as the contention of the learned Counsel of appellant is concerned that the bill of July 2010 should be issued in proportion to the hours of the supply of power in terms of Clause 13 of the agreement and charging of KVA from 01.07.2010 instead of from 14.07.2010 is illegal. But I don't find any force in the aforesaid contention of the learned Counsel of the appellant because charging of KVA has no concern with the date of connection because KVA is recorded on the basis of load for half an hour. The Tariff of 2010-11 also lays down provision for charging of KVA and therefore in view of the Tariff of 2010-11 the KVA has been charged and bill for the month of July 2010 has rightly been raised by the respondent/J.S.E.B. in accordance with Tariff 2010/11.

9. In the result I do not find any merit in this appeal and accordingly the Judgement/Order of the learned V.U.S.N.F. passed on 19.09.2011 in case No. 32/2010 is hereby confirmed and this appeal is dismissed.

Let a copy of the Judgement be served on both the parties.

Sd/-
Electricity Ombudsman